IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO 2516 OF 2005

Dattatraya Khandu Pavle .. Petitioner

vs.

Shyam G. Agarwal .. Respondent.

Mr. Rajesh A. More for the Petitioner.

Mr.P.B.Shah for the Respodnent.

CORAM : Smt.Ranjana P. Desai, J.

DATED : 28th April, 2005.

P.C. :

1. In this petition the original defendant in civil suit no.305 of 2002 has challenged the order dated 7.4.2004 passed by the 5th Additional Small Causes Judge, Pune. By the impugned order the trial court has rejected the defendants application for appointment of court commissioner.

2. I have heard the learned Counsel appearing for both the sides. The eviction proceedings are initiated inter alia under section 16(1)(i) of the Maharashtra Rent Control Act, 1999. According to the defendant the plaintiff’s case is that 237 sq.ft area of the ground floor is in possession of the

defendant. However, subsequently in the oral evidence he has contradicted his own pleadings. The defendants further contention is that the undertaking given by the plaintiff is faulty and is not in terms of Section 16(6)(d)(i). It is the case of the defendant that as no specific area is stated in the undertaking, it is necessary to appoint a commissioner to ascertain the carpet area.

3. The trial court has rejected this application on the ground that the court commissioner could not be appointed to collect the evidence. This reasoning of the trial court cannot be faulted. However, in the circumstances of the case it will be open to the defendant to examine his architect in support of his case. The concerned architect can obviously take measurements of the alternative premises which are being offered by the plaintiff to the defendant. I am informed that the plaintiff’s evidence is over. The defendant has examined himself, but he wants to examine more witnesses. In the circumstances of the case, therefore, the following order would meet the ends of justice.

4. The defendant will be at liberty to examine

his architect. For that purpose the defendants architect can take measurements of the alternative premises which are being offered by the plaintiff to the defendant. Considering the fact that the plaintiff's evidence is over, and all other tenants have arrived at compromise with the plaintiff, it would be in the interest of justice that the suit is disposed of as expeditiously as possible, and at any rate within a period of 10 months from the date of receipt of this order.

5. Writ Petition is disposed of in the aforestated terms.

Judge.